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U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE  
OCT 5 2007  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VANESSA SIMMONDS,

Plaintiff,

v.

THE GOLDMAN SACHS GROUP, INC., a  
Delaware corporation,

BANK OF AMERICA CORPORATION, a  
Delaware corporation, successor in interest  
to FLEETBOSTON ROBERTSON  
STEPHENS, INC.,

LEHMAN BROTHERS HOLDINGS INC.,  
a Delaware corporation,

JPMORGAN CHASE & CO.,  
a Delaware corporation, successor in interest  
to J.P. MORGAN SECURITIES, INC.,

Defendants,

and

SONUS NETWORKS, INC., a Delaware  
corporation,

Nominal Defendant.

N **C07-1597** R

COMPLAINT FOR RECOVERY OF  
SHORT-SWING PROFITS UNDER  
SECTION 16(b) OF THE SECURITIES  
EXCHANGE ACT OF 1934

JURY DEMAND



07-CV-01597-CMP

COMPLAINT FOR RECOVERY OF  
SHORT-SWING PROFITS UNDER § 16(b) - 1

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## I. IDENTIFICATION OF PARTIES

1. **Plaintiff Simmonds.** Plaintiff Vanessa Simmonds is a resident of the state of Washington. She is a shareholder of Sonus Networks, Inc.

2. **Defendant Goldman Sachs.** Defendant The Goldman Sachs Group, Inc. ("Goldman Sachs") is a Delaware corporation headquartered in New York, New York. Goldman Sachs transacts business in the Western District of Washington.

3. **Bank of America Corporation.** Bank of America Corporation ("Bank of America") is a Delaware corporation headquartered in Charlotte, North Carolina. Bank of America is successor in interest to FleetBoston Robertson Stephens, Inc. ("FBRs"), and transacts business in the Western District of Washington.

4. **Defendant Lehman Brothers.** Defendant Lehman Brothers Holdings Inc. ("Lehman Brothers") is a Delaware corporation headquartered in New York, New York. Lehman Brothers transacts business in the Western District of Washington.

5. **Defendant JPMorgan Chase & Co.** Defendant JPMorgan Chase & Co., successor in interest to J.P. Morgan Securities, Inc., (collectively "JPMorgan"), is a Delaware corporation headquartered in New York, New York. JPMorgan transacts business in the Western District of Washington.

6. **Nominal Defendant.** Nominal defendant Sonus Networks, Inc. ("Sonus") is a Delaware corporation headquartered in Westford, Massachusetts, and is the issuer in this action brought under Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b) ("Section 16(b)").

## II. JURISDICTION AND VENUE

7. *Jurisdiction.* Jurisdiction in this Court arises under Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa.

8. *Venue.* Venue is proper in this Court under Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, because, *inter alia*, Goldman Sachs, Bank of America, Lehman Brothers and JPMorgan transact business in this district.

## III. STATUTORY DEMAND AND VESTING OF SECTION 16(b) CLAIMS

9. *Statutory Demand.* By letter dated July 10, 2007, which was faxed and mailed to the Sonus board of directors on that date, Ms. Simmonds made a 60-day demand on Sonus pursuant to Section 16(b).

10. *Failure to Comply with Demand.* More than 60 days have elapsed, and Sonus has failed to comply with Ms. Simmonds' Section 16(b) demand.

11. *Vesting of Claims in Plaintiff.* As a result of Sonus' failure to comply with Ms. Simmonds' demand, all rights to maintain this action have vested fully in Ms. Simmonds pursuant to Section 16(b). Sonus is named herein only as a nominal party.

## IV. FACTUAL ALLEGATIONS

12. *Lead Underwriters on Sonus IPO.* Prior to May 5, 2000, the date on which Sonus filed a preliminary prospectus with the Securities and Exchange Commission ("SEC"), Sonus retained Goldman Sachs, FBRS, Lehman Brothers and JPMorgan to serve as lead underwriters on the Initial Public Offering ("IPO") of Sonus common stock. Sonus filed its final prospectus with the SEC on May 25, 2000, and identified Goldman Sachs, FBRS, Lehman Brothers and JPMorgan as lead underwriters on its IPO.

13. ***Lock-Up Agreements.*** As a condition of the underwriting, Sonus' directors and officers, as well as other stock and option holders, as identified in the IPO prospectus, entered into "lock-up agreements" with Goldman Sachs and the other IPO underwriters. The lock-up agreements were for the specific purpose of collectively holding - and refraining from selling - shares of Sonus stock, and furthered the overall common objective described below. These lock-up agreements provided that, subject to limited exceptions, the stockholder could not offer, sell, contract to sell, pledge or otherwise dispose of any Sonus common stock or securities for a period of 180 days after the effective date of the IPO. Goldman Sachs, however, had the right, in its sole discretion, at any time without notice, to release all or any portion of the shares subject to lock-up agreements. As a result, Goldman Sachs, for itself and as representative of the other IPO underwriters, directly or indirectly shared control over the disposition of approximately 55 million shares of Sonus common stock at the time of the Sonus IPO.

14. ***Creating Opportunity to Profit from "Hot" Sonus IPO.*** Based on their assessment of Sonus as a potentially "hot" IPO - i.e., one in which there likely would be substantial investor demand for shares of Sonus stock in both the IPO allocation and aftermarket - Goldman Sachs, FBRs, Lehman Brothers and JPMorgan created the opportunity for themselves, directly and indirectly, to profit or share in any profits derived from transactions in Sonus stock.

15. ***Lack of Good Faith in IPO Underwriting Activities.***

(a) ***Scheme to Share in Customer Profits.*** Goldman Sachs, FBRs, Lehman Brothers and JPMorgan, directly and indirectly, through contracts, arrangements, understandings, relationships or otherwise, created the opportunity for themselves, directly and indirectly, to

1 profit or share in any profits derived from the transactions of their customers in Sonus stock.  
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3 This conduct violated NASD Conduct Rule 2330(f), which prohibited Goldman Sachs, FBRS,  
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5 Lehman Brothers and JPMorgan from sharing, directly or indirectly, in the profits or losses of  
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7 their customers. Based on this violation, Goldman Sachs, FBRS, Lehman Brothers and  
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9 JPMorgan lacked good faith in connection with their IPO underwriting and distribution  
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11 activities involving Sonus stock.  
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13 (b) *Laddering Activities.* Goldman Sachs, FBRS, Lehman Brothers and  
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15 JPMorgan, in conjunction with the other IPO underwriters and with the objective of inflating the  
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17 aftermarket price of Sonus stock, secretly required customers, in return for allocations of Sonus  
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19 IPO shares, to purchase additional shares of Sonus stock in the aftermarket at progressively  
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21 higher prices. This practice is referred to as "laddering," and violates Rule 101 of Regulation M  
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23 under the Securities Exchange Act of 1934. Based on this violation, Goldman Sachs, FBRS,  
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25 Lehman Brothers, JPMorgan and the other IPO underwriters lacked good faith in connection  
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27 with their IPO underwriting and distribution activities involving Sonus stock.  
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29 16. *Common Objective to Inflate Aftermarket Price of Sonus Stock.* Goldman  
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31 Sachs, FBRS, Lehman Brothers, JPMorgan and Sonus officers, directors and principal  
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33 shareholders coordinated their efforts towards inflating the aftermarket price of Sonus stock to a  
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35 level sufficiently above the IPO price to enable them to reap substantial profits from the sale of  
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37 Sonus stock.  
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39 17. *Furtherance of Common Objective.* In furtherance of this common objective,  
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41 Sonus officers, directors and principal shareholders agreed to, or acquiesced in, the pricing of  
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43 Sonus' IPO shares at a small fraction of what they knew to be the likely aftermarket price range  
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1 of Sonus stock based on clear indications of IPO and aftermarket demand. They did so with the  
2 expectation of deriving personal financial benefits, after the expiration of the lock-up  
3 agreements, from the sale of their Sonus stock into a market inflated through the activities of  
4 Goldman Sachs, FBRS, Lehman Brothers, JPMorgan and other IPO underwriters. For their part,  
5 Goldman Sachs, FBRS, Lehman Brothers and JPMorgan engaged in laddering and improper  
6 research-related activities that were designed to inflate the market price of Sonus stock. They did  
7 so with the expectation of creating the opportunity to profit or share in any profits derived from  
8 transactions in Sonus stock.  
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17 18. *IPO Shares Priced at \$23, Trade in Aftermarket Over \$51.* The 5.75 million  
18 shares of Sonus stock sold in connection with its IPO raised \$123 million for Sonus – less than  
19 one-half of what buyers paid for Sonus shares in the immediate aftermarket.  
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23 19. *10% Group Status.* Goldman Sachs, FBRS, Lehman Brothers, JPMorgan, the  
24 other IPO underwriters and Sonus officers, directors and principal shareholders beneficially  
25 owned Sonus stock while they pursued a common objective that involved acquiring, holding or  
26 disposing of Sonus stock, and thereby constituted a group (the “Group”) pursuant to  
27 Section 13(d) of the Exchange Act of 1934 and Rule 13d-5 promulgated thereunder.  
28 Collectively, the Group beneficially owned in excess of 10 percent of Sonus’ outstanding  
29 common stock from the Group’s inception prior to May 25, 2000, through at least May 24, 2001  
30 (the “Relevant Period”). As a result, Goldman Sachs, FBRS, Lehman Brothers, JPMorgan and  
31 the other members of the Group were subject to the reporting requirements of Section 16(a) and  
32 the short-swing trading prohibition of Section 16(b) throughout the Relevant Period.  
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20. *Transactions in Sonus Stock.* Throughout the Relevant Period and within periods of less than six months, Goldman Sachs, FBRs, Lehman Brothers and JPMorgan profited from purchases and sales, or sales and purchases, of Sonus stock of which they were beneficial owners for purposes of Section 16(b) (the "Transactions"). Goldman Sachs, FBRs, Lehman Brothers and JPMorgan directly or indirectly had or shared a direct or indirect pecuniary interest in Sonus stock in various ways, including, but not limited to, the following: (i) by sharing in the profits of customers to whom they made IPO allocations of Sonus stock; (ii) by allocating shares of Sonus stock to executives and other high-level insiders of other companies, both private and public, from which Goldman Sachs, FBRs, Lehman Brothers and JPMorgan expected to receive new or additional investment banking business in return (a practice referred to as "spinning"); and (iii) by creating the opportunity for other members of the Group to derive personal financial benefits from the sale of Sonus stock into an inflated market, in an effort by Goldman Sachs, FBRs, Lehman Brothers and JPMorgan to obtain future investment banking business from Sonus.

21. *Failure to Comply with Section 16(a) Reporting Requirements.* Goldman Sachs, FBRs, Lehman Brothers and JPMorgan failed to report the Transactions as required under Section 16(a) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78p(a), thereby tolling the two-year statute of limitations set forth in Section 16(b). Because Goldman Sachs, FBRs, Lehman Brothers and JPMorgan failed to report these Transactions as required by Section 16(a), the precise dates of prohibited Transactions made by them, any member of the Group, or others, of Sonus stock beneficially owned by Goldman Sachs, FBRs, Lehman Brothers and/or JPMorgan, are unknown to Ms. Simmonds at this time.

V. CAUSE OF ACTION

**Short-Swing Profits Generated In Violation of Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b).**

22. *Incorporation.* The allegations in the preceding paragraphs are incorporated as if fully set forth herein.

23. *Short-Swing Trades.* Goldman Sachs, FBRS, Lehman Brothers and JPMorgan profited from the Transactions in Sonus stock by engaging in such Transactions within periods of less than six months during the Relevant Period. Goldman Sachs, FBRS, Lehman Brothers and JPMorgan thereby violated Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b).

24. *Remedy.* Goldman Sachs, Bank of America, as successor in interest to FBRS, Lehman Brothers and JPMorgan must disgorge all profits, with interest, from their respective short-swing Transactions in Sonus stock, in amounts to be proven at trial.

VI. REQUESTED RELIEF

Plaintiff respectfully requests the following relief:

(a) Judgment against Goldman Sachs, Bank of America, Lehman Brothers and JPMorgan for all profits from the Transactions prohibited by Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78p(b), in amounts to be proven at trial;

(b) An award of pre-judgment and post-judgment interest on all amounts awarded or restitution or disgorgement ordered;

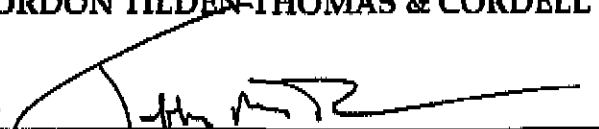
(c) An award of costs and attorneys' fees against Goldman Sachs, Bank of America, Lehman Brothers and JPMorgan; and

(d) Such other and further relief that this Court deems just and equitable.



1 DATED this 5<sup>th</sup> day of October, 2007.

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3 GORDON TILDEN-THOMAS & CORDELL LLP

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